

## **NOTICE OF INTENT**

Department of Environmental Quality  
Office of Environmental Assessment  
Environmental Planning Division

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to adopt the Inactive and Abandoned Sites regulations, LAC 33:VI.Chapter 9 (Log #IA003).

This rule will implement the Voluntary Investigation and Remedial Action Law, Act 1092 of the 1995 Regular Session of the Louisiana Legislature. The rule provides a mechanism by which persons may voluntarily remediate contaminated properties and receive from the state a release from liability for past contamination in the form of a Certificate of Completion. This release would also apply to future owners of the property. Fear of pollution liability prevents many prospective purchasers, developers, etc., from undertaking cleanups at contaminated former industrial properties, effectively leaving these properties idle, unproductive, and unremediated. This rule will provide a mechanism to promote the remediation and re-use of such properties. Act 1092 of the 1995 Louisiana Legislature authorizes the department to promulgate regulations to provide for the return of commercial and industrial sites to productive use after remediation by the limitation of liability to landowners who voluntarily clean up contaminated sites. The basis and rationale for this proposed rule are to provide a mechanism to promote assessment, remediation, and re-use of contaminated properties.

This proposed rule meets an exception listed in R.S. 30:2019 (D) (3) and R.S.49:953 (G) (3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on January 25, 2001, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by IA003. Such comments must be received no later than February 1, 2001, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to FAX (225) 765-5095. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of IA003.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part VI. Inactive and Abandoned Hazardous Waste and Hazardous Substance Site**  
**Remediation**

**Chapter 9. Voluntary Remediation**

**§901. Authority and Purpose**

These regulations are established by the Department of Environmental Quality in accordance with R.S. 30:2001 et seq., in particular, R.S. 30:2285 et seq. The purpose of these regulations is to promote the voluntary assessment, remediation, and sustainable reuse of contaminated properties, while protecting public health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:\*\*.

**§903. Definitions**

A. The following definitions apply to terms used in this Chapter. Except as provided in this Section, the terms in this Chapter retain the definitions provided in LAC 33:VI.117.

*Applicant*—a person who has submitted an application, as described in LAC 33:VI.911, to participate in the voluntary remediation program.

*Application*—a submission to the department, as described in LAC 33:VI.911, for participation in the voluntary remediation program.

*Certificate of Completion*—written approval for a specific voluntary remediation site issued by the administrative authority to a person who has undertaken and completed a voluntary remedial action at the site in accordance with a previously-approved remedial action plan and that achieved the remedial action goals in the plan. Upon issuance, this approval provides release from liability in accordance with LAC 33:VI.907.

*Nonresponsible Person*—a person who is not a responsible person as defined in this Section.

*Partial Voluntary Remedial Action*—a voluntary remedial action for which not all discharges or disposals or threatened discharges or disposals at a voluntary remediation site are removed or remediated (e.g, soils are remediated, but groundwater is not, or only a portion of the site is remediated). Partial voluntary remedial actions must

be consistent with RECAP, and any reuse of the site must not pose a significant threat to public health, safety, and welfare and the environment.

*Responsible Person or Responsible Landowner*—a person who is responsible under the provisions of R.S. 30:Chapter 12.Part 1 and LAC 33:Part VI for the discharge or disposal or threatened discharge or disposal of a hazardous substance or hazardous waste at a voluntary remediation site, except that, for the purposes of this Chapter, a person who owns or has an interest in a voluntary remediation site is generally not a responsible person or responsible landowner, unless that person:

- a. was engaged in the business of generating, transporting, storing, treating, or disposing of a hazardous substance or hazardous waste on or in the site, or knowingly permitted others to engage in such a business on the site;
- b. knowingly permitted any person to make regular use of the site for disposal of waste;
- c. knowingly permitted any person to use the site for disposal of a hazardous substance;
- d. knew or reasonably should have known that a hazardous substance was located in or on the site at the time right, title, or interest in the site was first acquired by the person and engaged in conduct associating that person with the discharge or disposal; or
- e. took action that significantly contributed to the discharge or disposal after that person knew or reasonably should have known that a hazardous substance was located in or on the site.

*Voluntary Remedial Action*—risk-based cleanup of a voluntary remediation site performed in accordance with an approved voluntary remedial action plan. Unless specified as a partial voluntary remedial action, all discharges or disposals or threatened discharges or disposals are removed or remediated. Voluntary remedial actions must be consistent with RECAP.

*Voluntary Remediation*—participation in the voluntary remediation program, including application, remedial investigation, remedial action, and receipt of certificate of completion.

*Voluntary Remediation Program*—program operated in accordance with R.S. 30:Chapter 12.Part 2 and this Chapter, under which persons may apply to the department to investigate, perform voluntary remedial actions at, and receive Certificates of Completion for voluntary remediation sites.

*Voluntary Remediation Site or Site*—area of immovable property that is clearly identified by survey and legal description at which a voluntary remedial action is to be performed, is being performed, or has been performed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:\*\*.

### **§905. Eligibility**

A. Eligible Sites. All sites shall be eligible for voluntary remediation, except for the following:

1. permitted hazardous waste management units (HWMU) regulated under LAC 33:Part V or federal hazardous waste regulations (if the HWMU is located within a larger site, then only that portion of the site inside the HWMU boundary is ineligible);
2. sites that have been proposed in the *Federal Register* to be placed on the National Priorities List (however, sites that are proposed to be placed on the National Priorities List, but which are determined not to be appropriate for listing, will become eligible if not otherwise ineligible);
3. sites that have been placed on the National Priorities List (however, such sites become eligible if they are subsequently removed from the National Priorities List and are not otherwise ineligible);
4. trust-fund-eligible underground storage tank systems, as defined in and regulated by LAC 33:Part XI; and
5. sites that have pending, unresolved federal environmental enforcement actions (not including simple cost recovery actions) that are related to the proposed voluntary remediation.

#### **B. Eligible Persons**

1. All persons shall be eligible to receive Certificates of Completion after completing approved voluntary remedial actions, except as otherwise provided in this Chapter.
2. Nonresponsible persons, as defined in this Chapter, are eligible to receive Certificates of Completion for partial voluntary remedial actions. Responsible persons, as defined in this Chapter, are not eligible to receive Certificates of Completion for partial voluntary remedial actions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:\*\*.

### **§907. Liability and Exemptions from Liability**

A. Persons Exempt from Liability. Following a completed voluntary remedial action and issuance of a Certificate of Completion, the following persons shall be exempt from liability provided in R. S. 30:Chapter 12.Part 1 and LAC 33:Part VI:

1. the person who undertook and completed the voluntary remedial action at the voluntary remediation site;
2. the owner of the voluntary remediation site, if he is not a responsible person;
3. a person who acquires all or part of the voluntary remediation site;
4. a successor or assignee of any person to whom the liability exemption applies; and
5. a person who provides financing for the implementation of the voluntary remedial action plan or for the development of the voluntary remediation site in accordance with the applicable use restrictions.

B. Persons Not Exempt from Liability. Notwithstanding Subsection A of this Section, the exemption from liability provided in this Chapter does not apply to:

1. a person who aggravates or contributes to a discharge or disposal or threatened discharge or disposal that was not remedied under an approved voluntary remedial action plan;
2. a person who was a responsible person under R.S. 30:Chapter 12.Part 1 and LAC 33:Part VI for a discharge or disposal or threatened discharge or disposal that was identified in the approved voluntary remedial action plan before taking an action that would have made the person subject to the exemptions under Subsection A.2-5 of this Section; or
3. a person who obtains approval of a voluntary remedial action plan by fraud or misrepresentation or by knowingly failing to disclose material information, or who knows that the approval was so obtained before taking an action that would have made the person subject to the exemptions from liability under Subsection A of this Section.

C. Performance Liability. Persons specified in Subsection A of this Section shall not be liable for aggravating or contributing to any discharge or disposal or threatened discharge or disposal identified in an approved voluntary remedial action plan, for the purpose of Subsection B.1 of this Section, as a result of their performance of the remedial actions required in accordance with the plan and the direction of the administrative authority. Nothing in this Chapter relieves a person of any liability for failure to perform the work required by the plan in a workman-like manner and in accordance with generally accepted standards of performance and operation applicable to such remedial work.

D. Liability from Participation. No person who is not already liable for a site under R.S. 30:Chapter 12.Part 1 or LAC 33:Part VI shall incur such liability from simply having participated in the voluntary remediation program, except as provided in Subsection B.1 and C of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:\*\*.

#### **§909. Voluntary Remedial Investigation and Remedial Action Requirements**

A. Remedial Investigations. Voluntary remedial investigations shall be consistent with the methods and processes provided by RECAP. Voluntary remedial investigations must include:

1. the determination of the nature and extent of potential threats to human health and the environment through data collection and site characterization; and
2. the development of remedial action goals.

B. Remedial Actions. Voluntary remedial actions shall protect human health and the environment and comply with the RECAP standards determined in accordance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:\*\*.

#### **§911. Application Process**

A. Voluntary Remedial Investigation Applications. Prior to performing a remedial investigation and submission of the application in Subsection B of this Section, the applicant may submit a Voluntary Remedial Investigation Application for review and approval by the administrative authority, which consists of the following:

1. a Voluntary Remedial Investigation Application Form VCP001, available from the Office of Environmental Assessment, Remediation Services Division and on the department website at [www.deq.state.la.us](http://www.deq.state.la.us), with required attachments, accompanied by the remedial investigation work plan review fee; and

2. a remedial investigation work plan, which shall conform to the site investigation requirements of RECAP and, at a minimum, include the following:

a. identification of all data needs following the review of existing preliminary evaluation reports and other existing data;

b. identification of all potential exposure pathways/receptors and associated data needs;

c. identification of all potentially applicable, relevant, and appropriate local, state, and federal requirements and associated data needs;

d. a site-specific health and safety plan including necessary training, procedures, and requirements;

e. a site-specific sampling and analysis plan that includes the number, type, and location of all samples to be taken and the types of analyses to be conducted during the required site characterization activities; and

f. a quality assurance/quality control plan that identifies the quality assurance objectives and the quality control procedures necessary to obtain data of a sufficient quality for the remedial investigation.

B. Voluntary Remediation Applications. Prior to implementation of a voluntary remedial action at a site, applicants must submit a Voluntary Remediation Application to the Office of Environmental Assessment, Remediation Services Division for review and final approval. The application shall consist of the following:

1. a Voluntary Remediation Application Form VCP002, available from the Office of Environmental Assessment, Remediation Services Division and on the department website at [www.deq.state.la.us](http://www.deq.state.la.us), with required attachments, accompanied by the remedial action plan review fee;

2. a voluntary remedial action plan that contains a remedial investigation report, which shall, at a minimum, include:

a. the scope and description of the investigation;

b. a site background summary;



- c. sampling and analysis results;
- d. identification of the sources of the release;
- e. identification of the horizontal and vertical extent of the contamination;
- f. proposed remedial action goals; and
- g. conclusions and recommendations for further action; and

3. a voluntary remedial action plan containing the remedial design and the remedial project plan. The remedial design shall implement the remedy that is being proposed in order to attain the remedial action goals. The remedial project plan shall include all tasks, specifications, and subplans necessary for the implementation of the remedial design, including construction and operation of the final remedy. The requirements for the remedial project plan include:

- a. a work plan, including:
  - i. a general description of the work to be performed and a summary of the engineering design criteria;
  - ii. maps showing the general location of the site and the existing conditions of the facility;
  - iii. a copy of any required permits and approvals;
  - iv. detailed plans and procedural material specifications necessary for the construction of the remedy;
  - v. specific quality control tests to be performed to document the construction, including specifications for the testing or reference to specific testing methods, frequency of testing, acceptable results, and other documentation methods as required by the administrative authority;
  - vi. start-up procedures and criteria to demonstrate the remedy is prepared for routine operation; and
  - vii. additional information to address ARARs;
- b. a sampling and analysis plan;
- c. a quality assurance/quality control plan;
- d. a site-specific health and safety plan;

e. a project implementation schedule;

f. if deemed necessary by the administrative authority, an operation and maintenance plan for post-remedial management including, but not limited to:

i. the name, telephone number, and address of the person responsible for the operation and maintenance of the site;

ii. a description of all operation and maintenance tasks and specifications;

iii. all design and construction plans;

iv. any applicable equipment diagrams, specifications, and manufacturer's guidelines;

v. an operation and maintenance schedule;

vi. a list of spare parts available at the site for repairs;

vii. a site-specific health and safety plan; and

viii. other information that may be requested by the administrative authority;

g. if deemed necessary by the administrative authority, a monitoring plan for post-remedial management. This monitoring plan must include a description of provisions for monitoring of site conditions during the post-remedial management period to prevent further endangerment to human health and the environment, including:

i. the location of monitoring points;

ii. the environmental media to be monitored;

iii. the hazardous substances to be monitored and the basis for their selection;

iv. a monitoring schedule;

v. monitoring methodologies to be used (including sample collection procedures and laboratory methodology);

vi. provisions for quality assurance and quality control;

- vii. data presentation and evaluation methods;
  - viii. a contingency plan to address ineffective monitoring;
- and
- ix. provisions for reporting to the department on a semiannual basis including, at a minimum:
    - (a). the findings from the previous six months;
    - (b). an explanation of any anomalous or unexpected results;
    - (c). an explanation of any results that are not in compliance with the RECAP standards; and
    - (d). proposals for corrective action; and
  - h. other information that may be required by the administrative authority. The department may allow information to be incorporated by reference to avoid unnecessary duplication.

#### C. Acceptance for Public Review

1. After a satisfactory review of the Voluntary Remediation Application and the incorporation of necessary modifications required by the administrative authority into the application, the administrative authority will accept the application for public review.
2. After the application is accepted for public review and before the beginning of the public comment period provided in Subsections D and F of this Section, the applicant shall provide the number of copies of the accepted application specified by the administrative authority to the Office of Environmental Assessment, Remediation Services Division.
3. The applicant shall also place copies of the accepted application in local public facilities, to be determined by the administrative authority (e.g., public library, local government office), near the voluntary remediation site.

D. Public Notice. Upon acceptance of the Voluntary Remediation Application, as set forth in Subsection C of this Section, the applicant must place a public notice of the proposed voluntary remedial action plan in the local newspaper of general circulation in the parish where the voluntary remediation site is located. The public notice shall be a single classified advertisement at least four inches by six inches in size in the legal or public notices section. The applicant must provide proof of publication of the notice to

the Office of Environmental Assessment, Remediation Services Division prior to final approval of the plan. The public notice shall:

1. solicit comments, for a minimum of 30 days, on the voluntary remedial action plan from interested parties;
2. provide the names of all of the applicants and the physical location of the voluntary remediation site;
3. indicate that comments shall be submitted to the Office of Environmental Assessment, Remediation Services Division (including the division's contact person, mailing address, and physical address), as well as indicate the deadline for submission of comments;
4. indicate where copies of the proposed plan can be reviewed by the public; and
5. inform interested parties that they may request a public hearing on the voluntary remedial action plan.

E. Direct Notice to Landowners. Within five days of the public notice in Subsection D of this Section, the applicant must send a direct written notice of the voluntary remedial action plan to persons owning immovable property contiguous to the voluntary remediation site. This notice shall be sent to persons listed as owners of the property on the rolls of the parish tax assessor as of the date on which the voluntary remediation application is submitted. The notice must be sent by certified mail and contain the same information that is provided in the public notice. Return receipts or other evidence of the receipt of the direct notice must be provided to the Office of Environmental Assessment, Remediation Services Division prior to final approval of the plan.

#### F. Public Hearing and Comment

1. Comments on the voluntary remedial action plan shall be accepted by the Office of Environmental Assessment, Remediation Services Division for a period of 30 days after the date of the public notice and shall be fully considered by the division prior to final approval of the plan. However, if the administrative authority determines a shorter or longer comment period is warranted, the administrative authority may provide for a shorter or longer comment period in the public notice described in Subsection D.1 of this Section. Also, the comment period provided in the public notice may be extended by the administrative authority if the administrative authority determines such an extension is warranted.
2. A public hearing may be held if the administrative authority determines a hearing is necessary based on public comments or other information.

3. The applicant shall be responsible for the actual costs of any such public hearing including, but not limited to, the costs of building rental, security, court reporter, and hearing officer.

G. Prior to final approval of the Voluntary Remediation Application, the administrative authority may require further modifications of the proposed plan if warranted based on issues brought forth by the public.

H. Upon final approval of the Voluntary Remediation Application, the administrative authority may include in the approval an acknowledgement that, upon certification of completion of the remedial actions, the applicant shall receive the exemption from liability provided for in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:\*\*.

### **§913. Completion of Voluntary Remedial Actions**

A. Implementation. Voluntary remedial actions must be performed in accordance with the voluntary remedial action plan approved by the administrative authority. Any modification in the plan must be approved by the administrative authority in advance of implementation of the modification. Modifications that result in a fundamental change of the plan (e.g., less stringent cleanup standards or changes in remedial approach with greater local impact, such as bioremediation to incineration) must undergo the public notice and hearing procedure in LAC 33:VI.911 prior to approval and implementation.

B. Inspections. The department reserves the right to inspect and oversee voluntary remedial actions in accordance with LAC 33:VI.517.

#### **C. Completion of Voluntary Remedial Actions**

1. Upon completion of a voluntary remedial action, the applicant shall submit a voluntary remedial action report, which must include:

a. a general description of the remedial action activities conducted at the site;

b. a demonstration that the remedial actions have resulted in the attainment of the remedial action goals approved by the department in the Voluntary Remediation Application;

c. a description of the volume and final disposal or reuse location and a copy of any waste manifests or other documentation of the disposition for wastes or environmental media that were removed from the site;

d. documentation that any physical control and/or treatment system, or combination of physical controls and treatment systems, have been constructed or completed and are functioning as described in the remedial design and remedial project work plan; and

e. other information that may be required by the department.

2. After satisfactory completion of a voluntary remedial action demonstrating that the remedial action goals have been accomplished and approval of the voluntary remedial action report, the administrative authority shall issue a Certificate of Completion to the applicant.

3. Certificates of Completion that are issued to a responsible person for a voluntary remedial action in which a voluntary remediation site is remediated for industrial use are valid only as long as the use of the site is industrial. Furthermore, where the approved remedial action incorporates use restrictions, institutional controls, or engineering controls, the Certificate of Completion is subject to compliance with such use restrictions, institutional controls, or engineering controls.

D. Termination at Will. The applicant may terminate participation in the voluntary remediation program at any time and for any reason, provided that:

1. the applicant provides written notice to the Office of Environmental Assessment, Remediation Services Division at least 15 days in advance of the termination;

2. the applicant has reimbursed the department for any reasonable costs incurred by the department up through the time of termination; and

3. termination of participation does not pose an immediate threat to public health, safety, and welfare and the environment and does not substantially increase the cost of future remediation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:\*\*.

#### **§915. Additional Requirements for Partial Voluntary Remedial Actions**

A. Criteria for Partial Remediation. The administrative authority may approve a Voluntary Remediation Application for partial voluntary remedial action submitted in accordance with LAC 33:VI.911, provided:

1. the applicant is a nonresponsible person;
2. the voluntary remedial action plan provides for all remedial actions necessary to allow for any proposed reuse or redevelopment of the site in a manner that does not pose a significant threat to public health, safety, and welfare and the environment;
3. the remedial action and the activities associated with any proposed reuse or redevelopment of the site will not:
  - a. aggravate or contribute to discharges or disposals or threatened discharges or disposals that are not required to be removed or remedied under the voluntary remedial action plan; and
  - b. interfere with or substantially increase the cost of future remedial actions to address the remaining discharges or disposals or threatened discharges or disposals; and
4. that prior to approval of the Voluntary Remediation Application, the owner of the voluntary remediation site agrees, in writing, to the following terms necessary to carry out remedial actions to address the remaining discharges or disposals or threatened discharges or disposals:
  - a. to cooperate with the administrative authority or his authorized representatives in taking actions necessary to investigate or address remaining discharges or disposals or threatened discharges or disposals, including:
    - i. providing access to the property to the administrative authority and his authorized representatives;
    - ii. allowing the administrative authority or his authorized representatives to undertake activities at the property, including placement of borings, wells, equipment, and structures on the property; and
    - iii. granting rights-of-way, servitudes, or other interests on the property to the department for any of the purposes provided in Subsection A.4.a.i or ii of this Section;
  - b. to avoid any action that interferes with the remedial actions in Subsection A.4.a of this Section; and

c. to impose restrictions on the future use of the property as provided in Subsection C of this Section.

B. Written Agreement. The written agreement provided for in Subsection A.4 of this Section shall be binding on the successors and assigns of the owner, and the owner shall record the agreement, or a memorandum approved by the administrative authority summarizing the agreement, with the clerk of court in the official records of the parish where the voluntary remediation site is located prior to the issuance of a Certificate of Completion for the site.

C. Future Use Restrictions for Voluntary Remediation Sites Subject to Partial Voluntary Remedial Actions

1. Use Restrictions Mandatory. No partial voluntary remedial action shall be approved and no Certificate of Completion shall be issued for the partial voluntary remedial action unless the owner of the voluntary remediation site imposes and records necessary restrictions on the future use of the site, as provided in this Subsection.

2. Determination of Use Restrictions. The administrative authority shall determine the appropriate restrictions on the future use of the site that are necessary to prevent a significant threat to the public health, safety, and welfare and the environment. The administrative authority may conduct public hearings in the parish where the site is located to determine the reasonableness and appropriateness of such restrictions.

3. Imposition and Recordation of Use Restrictions. The owner of the voluntary remediation site shall impose restrictions on the future use of the site, as determined by the administrative authority under Subsection C.2 of this Section, and shall record the use restrictions with the clerk of court in the official records of the parish in which the site is located prior to the issuance of a Certificate of Completion for the site.

4. Modification or Removal of Use Restrictions

a. Restrictions on the future use of the voluntary remediation site shall not be modified, canceled, or removed unless authorized in advance by the administrative authority.

b. The administrative authority shall not authorize the modification, cancellation, or removal of restrictions on the future use of the site unless the site is further remediated to remove or remedy the remaining discharges or disposals or threatened discharges or disposals under the requirements of this Chapter.

c. The administrative authority must conduct at least one public hearing in the parish in which the site is located at least 30, and not more than 60, days prior to authorizing the modification, cancellation, or removal of restrictions on the future use of the site as provided in Subsection C.4.a and b of this Section.



AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:\*\*.

### **§917. Fees and Direct Cost Recovery**

#### **A. Fees**

1. Voluntary Remedial Investigation Application Review Fee. Remedial investigation work plans submitted to the department for review must be accompanied by a \$500 review fee.

2. Voluntary Remediation Application Review Fee. Voluntary Remedial Action Applications must be accompanied by a \$500 review fee.

3. No application shall be accepted or reviewed unless accompanied by the appropriate review fee as required in Subsection A.1 and 2 of this Section.

B. Cost Recovery. Participants in the voluntary remediation program shall reimburse the department for actual direct costs associated with reasonable and appropriate oversight activities of the department conducted in accordance with this Chapter including, but not limited to, review, supervision, investigation, and monitoring activities.

1. Application review fees required by Subsection A of this Section, which are paid by the applicant, are subtracted from the actual direct costs for which the applicant is invoiced.

2. No certificate of completion shall be issued by the administrative authority unless the actual direct costs assessed by the department are paid in full by the applicant.

3. The department shall invoice the applicant for accrued actual direct costs (less any application review fees already paid) on a quarterly basis following the date of application. A final invoice shall be sent after the voluntary remedial action is completed and prior to issuance of a Certificate of Completion.

4. Payment shall be made by check, draft, or money order payable to the Department of Environmental Quality and mailed to the department at the address shown on the invoice.

5. Payment shall be made by the due date shown on the invoice.

a. Payments that are not received within 15 days of the due date will be assessed a late payment fee equal to five percent of the invoiced amount.

b. Payments not received within 30 days of the due date will be assessed a late payment fee of an additional five percent of the original invoiced amount.

c. Payments not received within 60 days of the due date will be assessed a late payment fee of an additional five percent of the original invoiced amount.

d. If payments are not submitted within 90 days of the due date, the department may suspend all work on the site until such time as payment is received by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:\*\*.

### **§919. Record Retention**

A. All data, reports, plans, drawings, correspondence, and other investigation and remediation records generated by applicants for voluntary remediation must be maintained by the applicants for at least three years after the date of issuance of the Certificate of Completion, or if no certificate is issued, for at least three years after termination of participation in the voluntary remediation program.

B. All data, reports, plans, drawings, correspondence, and other records generated during post-remedial management, as described in LAC 33:VI.911.B.3.f and g, must be maintained by the owner of the voluntary remediation site as long as post-remedial management is required. The owner of a voluntary remediation site undergoing post-remedial management must notify the subsequent owner of the site of these recordkeeping requirements.

C. The records required to be maintained in Subsection A and B of this Section must be made available to the department by the applicant or owner upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:\*\*.

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

LOG #: IA003

Person

Preparing

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Return

Address: Remediation ServicesP. O. Box 82178Baton Rouge, LA 70884

Rule

Title: Inactive and Abandoned SitesVoluntary RemediationProgram – LAC 33:VI.Chapter 9

Date Rule

Takes Effect: Upon Promulgation**SUMMARY**

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Existing staff and facilities will be used to implement this rule. No significant additional cost to the agency is anticipated. This estimate is based on existing staff being able to handle the expected response to this voluntary program.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

No negative effect on revenue collections by state or local governments is anticipated. Both state and local governments should see increased tax revenue collections due to the return of previously-idle contaminated properties to commerce.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)**

Implementation of this rule should result in a net economic benefit to affected persons or non-governmental groups by bringing underutilized properties back into commerce with the limitation of liability for future remedial costs. This should help to create jobs and stimulate business activity. No person is compelled by this rule to incur costs of cleanup, as participation is entirely voluntary.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule should help to increase employment by encouraging the cleanup and reuse of previously-contaminated and idle properties. This should stimulate business activity and create jobs. This rule is not anticipated to have a significant effect on competition.

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Signature of Agency Head or Designee

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LEGISLATIVE FISCAL OFFICER OR DESIGNEE

**James H. Brent, Ph. D., Assistant Secretary**

Typed Name and Title of Agency Head  
or Designee

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Date of Signature

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Date of Signature

LFO 7/1/94

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This rule will implement Act 1092 of the 1995 Louisiana Legislature, the Voluntary Investigation and Remedial Action Law. The rule provides a mechanism by which persons may voluntarily remediate contaminated properties and receive from the state a release from liability for past contamination in the form of a Certificate of Completion. This release would also apply to future owners of the property.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

Fear of pollution liability prevents many prospective purchasers, developers, etc. from undertaking cleanups at contaminated former industrial properties, effectively leaving these properties idle, unproductive, and unremediated. This rule will provide a mechanism to promote the remediation and re-use of such properties.

Act 1092 of the 1995 Legislature authorizes the Department to promulgate regulations to provide for the return of commercial and industrial sites to productive use after remediation by the limitation of liability to landowners who voluntarily clean up contaminated sites.

- C. Compliance with Act II of the 1986 First Extraordinary Session

(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No, the proposed rule will not result in any increase in the expenditures of funds.

2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) \_\_\_\_ Yes. If yes, attach documentation.  
(b) \_\_\_\_ No. If no, provide justification as to why this rule change should be published at this time.

This is not applicable.



**FISCAL AND ECONOMIC IMPACT STATEMENT****WORKSHEET****I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED**

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 00-01	FY 01-02	FY 02-03
PERSONAL SERVICES	\$0	\$0	\$0
OPERATING EXPENSES	\$0	\$0	\$0
PROFESSIONAL SERVICES	\$0	\$0	\$0
OTHER CHARGES	\$0	\$0	\$0
EQUIPMENT	\$0	\$0	\$0
TOTAL	\$0	\$0	\$0
MAJOR REPAIR & CONSTR.	\$0	\$0	\$0
POSITIONS(#)	0	0	0

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

Existing staff and funds will be used to implement the rule. Existing sites already subject to current remediation programs will be alternatively cleaned up under the Voluntary Remediation Program.

Note: This estimate is based on existing staff and resources being adequate to handle the expected response to this voluntary program. Should the response to this voluntary program be significantly greater than expected, additional staffing and resources may be needed. If demand on the program exceeds available staffing and resources, the Department may have to limit participation in the program.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 00-01	FY 01-02	FY 02-03
STATE GENERAL FUND	\$0	\$0	\$0
AGENCY SELF-GENERATED	\$0	\$0	\$0
DEDICATED	\$0	\$0	\$0
FEDERAL FUNDS	\$0	\$0	\$0
OTHER (Specify)			
TOTAL	\$0	\$0	\$0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes. Please see note in 3 above. If the response to this voluntary program is greater than expected, additional funding might be needed at a later date.

**B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.**

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

Local governments should realize a benefit from the proposed rule by inactive sites being brought back into commerce and placed on the tax rolls.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

The potential increase in taxes from these sites becoming productive should provide any funding needed by the local governmental units.



**FISCAL AND ECONOMIC IMPACT STATEMENT****WORKSHEET****II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS**

- A. What increase (decrease) in revenues can be anticipated from the proposed action?

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REVENUE INCREASE/DECREASE	FY 00-01	FY 01-02	FY 02-03
STATE GENERAL FUND	\$0	\$0	\$0
AGENCY SELF-GENERATED	\$0	\$0	\$0
RESTRICTED FUNDS*	\$0	\$0	\$0
FEDERAL FUNDS	\$0	\$0	\$0
LOCAL FUNDS	\$0	\$0	\$0
TOTAL	\$0	\$0	\$0

\*Specify the particular fund being impacted.

- B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

No significant increase or decrease is anticipated.

**III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS**

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Implementation of this rule should result in a net economic benefit to affected persons or non-governmental groups by bringing underutilized properties back into commerce with the limitation of liability for future remedial costs. This should help to create jobs and stimulate business activity. Also, the program is voluntary. No person is compelled to incur costs of cleanup. However, such benefits cannot be quantified as this is an entirely voluntary program and the size of the universe that will opt to enter the program is unknown.

All of the eligible sites are already subject to compulsory remediation under existing programs, so this voluntary program will not increase the cost of compliance.

**FISCAL AND ECONOMIC IMPACT STATEMENT****WORKSHEET**

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

There should be no significant impact on receipts or income to these groups resulting from this rule change.

**IV. EFFECTS ON COMPETITION AND EMPLOYMENT**

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

This rule will have no negative impact on competition and employment within the state. Jobs are expected to be generated and growth should occur in the private sector as remedial actions are completed on sites and those sites returned to productive use. Decreased remedial costs may also benefit Louisiana businesses competing with other states by freeing capital and resources for investment and facility improvements.